

**St. Regis Mohawk Indian Reservation  
St. Regis Mohawk Tribal Court**

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**NELSON SAWATIS,  
Complainant/Appellant**

**DECISION/ORDER  
12-LND-00002**

**ALICE SAWATIS COOK,  
Defendant/Respondent**

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**Procedural History**

Nelson Sawatis, Appellant, filed an appeal of a St. Regis Mohawk Land Dispute Tribunal, (hereinafter SRMT LDT), decision dated January 9th, 2012 in St. Regis Mohawk Tribal Court on February 9th, 2012. Following the filing of the appeal with the Court, a 20 day civil Summons was issued by the Court on February 10th, 2012. On February 10th, 2012, the Summons and Complaint were served upon the Defendant/Respondent, Ms. Alice Cook and proof of service was filed with the Court on February 12th, 2012. A request for an extension in filing an Answer to the Complaint was requested by the Defendant's daughter, Ms. Giselle Cook on March 5th, 2012, and a one week extension was granted by the Court.

The Defendant/Respondent's Answer was received on March 19th, 2012, and included in the answer was a Counterclaim against the Plaintiff, Mr. Nelson Sawatis seeking monetary damages in the amount of \$27,000 for lot rent. A letter from Alice Cook included with the Answer states that Ms. Alice Cook wishes for her daughter, Ms. Giselle Cook to handle the land dispute matter before the Court in her stead.

Pre-trial conferences were held in St. Regis Mohawk Tribal Court on May 15th, 2012, and June 5th, 2012. On July 25th, 2012 counsel for the Plaintiff submitted a brief on behalf of the Plaintiff with the Court. A pre-trial/ conference was held in St. Regis Mohawk Tribal Court on September 11th, 2012.

**Factual Background**

In 1972 Joseph Sawatis passed away intestate, leaving his 9 children as heirs to his estate. Mr. Joseph Sawatis owned a parcel of land identified as Lot #373, within the SRMIR boundaries and the distribution of this property is at the heart of the dispute currently before the Court.

On July 12th, 1993, seven of the children of Mr. Joseph Sawatis signed an agreement in the presence of former SRMT Tribal Clerk Ms. Carol Herne, indicating that they wished to 'relinquish' their claim to Lot #373 (estate of Joseph Sawatis), and that the property be given to Ms. Mary Alice Cook, and Ms. Dorothy Sawatis. *See*, Record July 12th, 1993 Agreement. Mr. Nelson Sawatis, and Ms. Audrey Oakes, (two of Joseph Sawatis' children), did not sign anything agreeing to this arrangement.

In a letter dated December 6th, 1993, Ms. Giselle Cook-Davis wrote to former SRMT Chief Norman Tarbell and stated that Mr. Nelson Sawatis put a slab and mobile home on the property known as Lot # 373-C, which she claims was given to her mother Ms. Mary Alice Cook in accordance with the July 12th, 1993 agreement. *See* Record December 6th, 1993 Letter. In October of 1995, Mr. Sawatis attempted to file an "Individual Land Dispute" but was not permitted to proceed because he was apparently, and according to the SRMT Clerk not an enrolled member at that time.

On August 23rd, 2001, a deed was issued to Ms. Alice Sawatis Cook for Lot #373-C containing approximately .42 acre(s). *See*, Record August 23rd, 2001, Deed Lot #373-C. Also on August 23, 2001, a deed was issued to Ms. Anna Marie Sawatis Lambert for Lot #373-B containing approximately .42 acre(s). *See*, Record August 23rd, 2001, Deed Lot #373-B. This occurred even though Ms. Anna Marie Sawatis Lambert had signed the 1993 relinquishment.

On December 3, 2009, the Land Dispute Resolution Ordinance, (LDRO) was enacted by the St. Regis Mohawk Tribal Council, effective 60 days from enactment. On June 22nd, 2011, a complaint was filed with the St. Regis Mohawk Land Dispute Tribunal by Plaintiff/Appellant Nelson Sawatis. The SRMT LDT subsequently issued a decision on January 9th, 2012.

On February 9, 2012, Plaintiff/Appellant Nelson Sawatis filed this appeal with the St. Regis Mohawk Tribal Court, alleging that he was aggrieved by an "Alleged exclusion from [the] estate in issue" and seeking review of a St. Regis Mohawk Tribe Land Dispute Tribunal (hereinafter SRMT LDT) Decision and Order, dated January 9, 2012.

### **Discussion**

The matter of *Sawatis v Cook*, comes before this Court on appeal from a January 9, 2012, Decision/Order rendered by the SRMT Land Dispute Tribunal. Mr. Nelson Sawatis initially argues in his Notice of Appeal that "the decision of the Tribunal was incorrect and based on inaccurate interpretations of applicable law" and is "...seeking a court judgment vacating the decision of the Tribunal in its entirety and an award of title of the subject property to myself, Nelson Sawatis" (Notice of Appeal, p2)

Respondent asks this Court in her Reply correspondence to "...honor[ ] the decision/conclusion of the Tribunal and deem[ ] that [Mary Alice Cook] is the rightful owner of Lot 373-C, located on Johnson Road, Akwesasne, NY." (Respondent's letter submitted by Respondent's daughter Giselle Cook on behalf of Respondent, dated August 22, 2012)

In this decision on the appeal, the Tribal Court hereby finds that equity dictates that Lot #373 must be re-apportioned;<sup>1</sup> and therefore finds the SRMT Use and Occupancy Deed issued to Respondent Mary Alice Cook by the Saint Regis Mohawk Tribal Council on August 21, 2001, must be modified.

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<sup>1</sup> Which means that Lots 373-A; 373-B and 373-C may require modification.

## POINT I

Appellant Nelson Sawatis argues in Point I of his appeal that he has obtained sole possessory interests in Lot #373-C pursuant to Common Law and Statutory principles of Adverse Possession. (Appellant's Brief, p2-4) The LDT decision which is the subject of this appeal denied Appellant's claim of "Adverse Possession", noting that Respondent never abandoned Lot #373-C and only provided permission to Respondent to utilize the property, contingent upon him moving structures at such time as Respondent notified him of her intention to return and build on that property. The LDT also based its denial of Appellant's claim on "the time element of twenty years passed has not been satisfied." (LDT Decision/Order, p10)

*Blacks Law Dictionary, (Eighth Ed.)* defines adverse possession as "[t]he use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open and notorious". The term also can apply to the doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time .*Id.*

In cases decided by this Court, we have shown that many land disputes involve, or trace their origins to, issues which very rarely are the creation of the current land owners. For instance, in *Jacobs v Ransom* the issues centered upon land issues following the construction of the St. Lawrence Seaway, (1953-1960). In *Point v Peters*, a poorly laid out parcel in 1938 caused a dispute in 2010. Similar was our decision in *Sawyer v Laughing*, whereby a 1948 sale which identified a 9 acre parcel was expanded to 11 acres when the land dispute was commenced post-2010. In each of these cases the Court could have "breathed life" into the 'common law' principle of "adverse possession". We have not, believing that a determination to apply the common law principle of adverse possession to lands on the SRMIR should be decided by the SRMT Council through a legislative act. As such, we see no reason to recognize and apply the common law principle of adverse possession to the case at bar, particularly when the existing SRMT Land Dispute Resolution Ordinance can address this matter.

## POINT IV

Appellant argues in Point IV that the decision of the SRMT LDT was "arbitrary and based upon incorrect law and must be vacated". (Appellant's Brief, pp 6-7) As we have found in other cases, when the current SRMT Court was implemented the Court inquired to the SRMT Office of General Counsel as to which laws are to be applied in SRMT Court. See *White v White*, 10 LND-00009, p29-30; *Chubb-Square v Tarbell*, 11-LND-00004, p28; *Wood v Terrance*, 1 CIV-00019, p 2; *Burns v Ward*, 09-SC-0003, p3 In response to this the Court received a bundle of certified SRMT laws, which included the following:

SRMT TCR 2008-16 Rules of Civil Appellate Procedure;  
SRMT-TCR 2008-17 Rules of Evidence;  
SRMT-TCR-18 Attorney Practice Requirements;  
SRMT TCR 2008-19 Civil Code;  
SRMT TCR 2008-20 Rules of Civil Procedure;  
SRMT TCR 2008-21 Court Filing Fees [Amended 2010-40]; and  
SRMT TCR 2008-22 Tribal Court and Judiciary;

And in 2009, the Court received a certified copy of:

SRMT TCR 2009-51 Animal Control Ordinance  
SRMT TCR 2009-69 Land Dispute Ordinance

Through this process, and to the date of this decision, the SRMT Council has not indicated to the Court that the SRMT Tribal Lands and Real Estate Act of 1995 is to be applied in SRMT Court. In light of the passage of the SRMT LDRO, the Court chooses not to apply the 1995 Act referenced by the Appellant Mr. Sawatis, and finds that the matter is properly resolved under the SRMT LDRO. Accordingly, the Court concludes that the decision of the SRMT LDT was not based upon incorrect law.

### **POINT II/POINT III**

Nelson Sawatis argues in Point II that the Tribal Use and Occupancy Deed issued to Respondent, Ms. Mary Alice Cook on August 23, 2001, is invalid because it violated the intestate distribution provisions of the SRMT Tribal Lands and Real Estate Act of 1995 and therefore must be revoked; and in Point III Appellant contends that equity demands that title to the subject property be transferred to Appellant as the lawful and recognized owner.

The record reflects that the land in issue between these litigants, identified as lot 373-C, is located between St. Regis Road and Johnson Road, Akwesasne. This lot is a portion of what has been referenced as the "Sawatis Homestead", once owned by Joseph Sawatis, who was the father of both Appellant and Respondent, until his demise over 40 years ago. Current Tribal records reflect that the "Sawatis Homestead" is now identified as consisting of Lots # 373: 373-A; 373-B and 373-C.

The Court's analysis of the validity of the Tribal Use and Occupancy Deed issued to Respondent on August 23, 2001, initially requires that we 'turn back the clock' to September 24, 1973, the date that Joseph Sawatis passed away. At the time of Joseph Sawatis' passing, he left behind 9 known heirs, identified in Tribal documents as; Dorothy M. Sawatis, (now deceased); Audrey Oakes (also now deceased); Isabel Rourke; Anna Marie Sawatis Lambert; Marita Francis; Virginia Dionne; Mary Alice Cook; Harriet Sawatis Sciabarrasi; and Nelson Sawatis. (An individual identified as Cynthia Sawatis is also noted.) Based upon the record before us it appears that Joseph Sawatis died intestate, having not left a will to declare his wishes regarding the disposal of his property or estate after his death.

At this time we must note that prior to August, 2001, there do not appear to have been ANY SRMT Use and Occupancy Deeds issued to ANY of the persons named above, (the 9 heirs of Joseph Sawatis).

Next, the SRMT LDRO was enacted by the SRMT Council on December 3, 2009, with an effective date being 60 days after its passage, (February, 2010). A key provision within the SRMT LDRO is that it permits "persons" to bring land disputes under the SRMT LDRO within 10 years of a "Tribal Council Final Decision" *See* LDRO(IV)(P) In the case at bar, the "Final Tribal Council decision" would be the issuance of the August 23, 2001, SRMT Use and Occupancy Deeds by the SRMT Council. This "final decision" would then 'trigger' the right of Mr. Nelson Sawatis to not only bring this dispute under the SRMT LDRO, but to also challenge the issuance of the 2001

SRMT Use and Occupancy Deeds in the first instance. Therefore this Court concludes that Mr. Sawatis filing of the dispute under the LDRO was timely.<sup>2</sup>

The Land Dispute Resolution Ordinance, (LDRO), adopted in December of 2009, also provides in relevant part, as to Intestate Distribution, that:

"-when a Tribal member dies without leaving a Will, their real property located on the Reservation shall pass to Tribal members as follows:(1)The surviving Tribal member spouse shall inherit the possessory interest formerly held by the deceased spouse.(2) If there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formerly held by a deceased tribal member parent."  
*LDRO(V)(E), emphasis added.*

From this section of the Ordinance the Court can conclude that all nine heirs would have an equal, undivided interest in the Joseph Sawatis estate upon his demise in 1973. We will refer to this as the 9/9th interest of Mr. Joseph Sawatis' heirs.

The record before the Land Dispute Tribunal reflects that in November of 1984; as in June, July and December of 1993; and in January, February and March of 1994, several of the heirs to the estate wrote to the Tribal Clerk and/or Tribal Chiefs regarding the Sawatis Homestead Lot #373 "ownership issues". (see LDT Case Record and Decision/Order)

The record also reflects that on July 12, 1993, over twenty years after Joseph Sawatis passed away, seven of the heirs to Mr. Sawatis estate, (reflecting 7/9<sup>th</sup>'s of the estate), met with the SRMT Tribal Clerk. At that meeting each of the seven siblings present executed an identical document referenced as "Claim to Sawatis Homestead", which was written on SRMT letterhead and witnessed by the Tribal Clerk. This document, which is also part of the LDT case file, states that:

"I the undersigned have legitimate claim to...my father's (Joseph Sawatis) Homestead, lot 373 located on St. Regis Road, Hogansburg, New York, now occupied by my sister Dorothy Sawatis. I hereby relinquish my interest and share of the said homestead and property to Dorothy Sawatis and Mary Alice Cook. Dorothy Sawatis will own the frontage towards St. Regis Road and Mary Alice Cook will own the frontage of Johnson Road. The Sawatis family reached an agreement and relinquished our individual shares of the Canadian portions of our father's estate to our brother, Nelson Sawatis, in lieu of any future claim to the Sawatis homestead on St. Regis Road." (Emphasis added)<sup>3</sup>

<sup>2</sup> We further note that since this is a dispute over the issuance of an SRMT Deed, this matter could have been filed as a matter of right directly in SRMT Court. *See* LDRO XV(C)(1)

<sup>3</sup> We will reference this as the "relinquishment document".

The signature of each of the seven siblings on each of their respective relinquishment documents, was certified by the Tribal Clerk. (See LDT record containing Tribal Clerk Record: page C-15 for Virginia (Sawatis) Dionne; C-16 for **Anna Marie Sawatis Lambert**; C-17 for Isabel Rourke; C-18 for Respondent Mary Alice Sawatis Cook; C-19 for Marion (Marita) Sawatis Francis; C-20 for Dorothy M.Sawatis; and C-21 for Harriet Sawatis Sciabarrasi.)

The LDT record reflects that although Mr. Nelson Sawatis was provided with notification of this July 12, 1993, meeting he elected not to attend. The record also reflects that another sibling, Audrey Oakes also "did not participate in the meeting." (LDT Decision/Order) Again, we must note that in the absence of a will, under the SRMT LDRO each of Joseph Sawatis' heirs would have an equal "possessory interest" in the estate. Also of critical importance is the fact that Appellant Nelson Sawatis DID NOT sign this 1993 relinquishment document, or any document relinquishing his individual interest or share in his father's homestead, known initially as Lot #373 on St. Regis Road. Nor did his sibling Audrey Oakes sign any such relinquishment.

Although the 1993 "Claim to Sawatis Homestead" relinquishment document states that the "Sawatis family reached an agreement and relinquished our individual shares of the Canadian portions of our father's estate to our brother, Nelson Sawatis, in lieu of any future claim to the Sawatis homestead on St. Regis Road", the LDRO nonetheless mandated that "the surviving Tribal member children shall receive equal possessory interests in tribal lands formerly held by a deceased tribal member parent". Therefore, siblings Nelson Sawatis and Audrey Oakes are entitled to their respective 1/9<sup>th</sup> interests as the law provides. Of critical significance is the fact that nothing in the record establishes that either Appellant Nelson Sawatis or sibling Audrey Oakes agreed to ANY relinquishment of their interests in Lot #373.<sup>4</sup>

On August 23, 2001, eight (8) years after the relinquishment document was signed by seven of the nine heirs, the SRMT issued two Right to Use and Occupancy Deeds; one of which conveyed Lot 373-B to Anna Marie Sawatis Lambert, and another conveying Lot 373-C, to Respondent Alice Sawatis Cook. (Tribal Clerk Record ,C-50-51; C-43-45; including maps). It does not appear from the record before us that Dorothy Sawatis ever received an SRMT Use and Occupancy Deed in 2001 – a deed she is purportedly entitled to under the 1993 relinquishment document.

The record before us is devoid of any correspondence or communication between the parties and/or the SRMT during this eight year period and there appears to be no explanation for the 8 year hiatus between the July 12, 1993, execution of the "Claim to Sawatis Homestead" relinquishment document and the issuance of these two SRMT Use and Occupancy Deeds in 2001.

It must be noted that it is upon Lot#373-C which Nelson Sawatis had installed a "slab" and a double wide trailer with permission of Mary Alice Cook, whom the lot is deeded

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<sup>4</sup> Although the LDT Decision talks of a parcel of property in St. Regis Village, we can give no effect to that for the following reasons: Mr. Nelson Sawatis and Ms. Audrey Oakes never signed the 1993 agreement to that effect; that property is within the Mohawk Council of Akwesasne's jurisdiction; and NO SRMT Deeds were ever issued pursuant to this 1993 agreement for property within the St Regis Mohawk Tribe's jurisdiction.

to by the SRMT.

In light of the foregoing, it appears that the Tribal Council relied upon the "Claim to Sawatis Homestead" relinquishment document signed by the seven of the nine siblings in 1993 when issuing the two SRMT deeds in 2001. The most troublesome concern is the basis for issuing the second deed for Lot #373-B to sibling Anna Marie Sawatis Lambert. This is troublesome because the above-referenced 1993 "relinquishment" document contains no reference to ANY of the siblings relinquishing their interests or shares to Anna Marie Lambert. It is unclear as to how the SRMT Council revived this sibling's right to a portion of the Joseph Sawatis estate while continuing to not address the non-relinquished right to the same of Mr. Nelson Sawatis and Ms. Audrey Oakes.

As we have recognized in this Decision, the SRMT LDRO provides that the surviving Tribal member children receive "equal possessory" interests in tribal lands formerly held by the deceased tribal member parent, (*LDRO(V)(E)*). As such, the law must be interpreted as requiring that each of the Sawatis children/siblings had an equal interest or share, unless or until they gave up or relinquished that share. Therefore, although the seven siblings who signed the 1993 "Claim to Sawatis Homestead" relinquishment document are each (contractually) free to give up their interest or share in the family homestead, under the SRMT LDRO, this Court cannot condone allowing seven of the siblings' relinquishment to effect the rights of the two other siblings who did not sign off on the relinquishment, namely: Nelson Sawatis and Audrey Oakes.

Clearly, one can determine from the language of the July 12, 1993, "Claim to Sawatis Homestead" relinquishment document, that the five siblings who signed the document are: (1) Isabel Rourke; (2) Marion (Marita) Sewatis Francis; (3) Harriet Sawatis Sciabarrasi; (4) Anna Marie Sawatis Lambert; and (5) Virginia (Sawatis) Dionne. It is here that we must recognize that these five (5) siblings could only relinquish what they themselves had a right to: each of their 1/9<sup>th</sup> interest in the Sawatis homestead. This would total 5/9th's of the Joseph Sawatis estate. It is this relinquishment that then gave Respondent Mary Alice Sawatis Cook and Dorothy M. Sawatis, the estate that remains following the relinquishment. To this total (5/9th's) they could each add their own 1/9<sup>th</sup> interest. This would then total 7/9ths of the Joseph Sawatis homestead. The remaining 2/9th's of the estate would be held by Nelson Sawatis and Audrey Oakes respectively.

This Court can recognize this 1993 relinquishment document as having the effect of relinquishing the five siblings' respective rights to the Joseph Sawatis Homestead. However, the Court must still recognize that the 1993 document has the effect of only relinquishing THESE FIVE SIBLINGS' 1/9<sup>th</sup> shares, (for a total of 5/9ths), TO Respondent Mary Alice Cook and Dorothy Sawatis.<sup>5</sup>

In light of the foregoing, we must also find that pursuant to the SRMT LDRO, the 1993 document CANNOT be relied upon to validate the two deeds issued by the SRMT in 2001; one issued to Mary Alice Sawatis Cook for Lot #373-C, and a second deed issued to Anna Marie Sawatis

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<sup>5</sup> Those siblings who may choose to revisit this issue would have a difficult time in overcoming this relinquishment and making a claim to the homestead.

Lambert for Lot #373-B. We make this finding because the issuance of these deeds in 2001 is clearly contrary to the 1993 relinquishment document and there is nothing in the record before us indicating that any "new" agreement was executed in prior to 2001. In particular, we find perplexing the issuance of the deed to Anna Marie Sawatis Lambert for Lot #373-B. The 1993 relinquishment document makes no mention of the relinquishment of any share or interest TO this sibling by the five (5) siblings who did relinquish. Further, this act appears to be contrary to the 1993 agreement wherein Anna Marie Sawatis Lambert herself relinquished her claims to the Homestead. (LDT Record, Tribal Clerk's File C-15, C-50) Therefore there is nothing in the record to justify how Ms. Sawatis-Lambert's interests were revived and placed over those 2 heirs, (namely Appellant Nelson Sawatis and sibling Audrey Oakes), who did not relinquish their interests, and remained entitled to their 1/9<sup>th</sup> shares under the SRMT LDRO. Again, the record is devoid of any document which can support a finding that the two (2) remaining siblings, (Nelson Sawatis and Audrey Oakes), had relinquished their right to their father's estate. Therefore, each would still be possessed of a 1/9th interest in the estate.

Our review of the record leaves the Court to conclude that both deeds were issued based upon the 1993 relinquishment document of seven of the nine children's interests. However, because two of the children/heirs DID NOT relinquish their shares, AND because in 2001 a deed was issued to Anna Marie Sawatis Lambert, an heir who HAD relinquished her share, we must conclude that the issuance of the 2001 deeds fails to comply with the LDRO recognition that "Tribal member children shall receive equal possessory interests in tribal lands formerly held by a deceased tribal member parent". LDRO(V)(E)

### **EQUITABLE REAPPORTIONMENT**

As noted above, at the time of Joseph Sawatis' passing in 1973 he had nine (9) children/heirs, AND he had executed no last will and testament. Therefore, as provided in the LDRO each of these children/heirs had 9 equal shares.

If there is any effect of the 1993 agreement/relinquishment document it is in recognizing that five (5) of the children/heirs relinquished their shares/interests. This would represent 5/9<sup>th</sup>s of the whole estate. As those five 5 children/heirs 'signed off' and relinquished their rights, this left them having no remaining interest. Next, a reading of the 1993 relinquishment document indicates that the five (5) children/heirs relinquished to the shares of Respondent Mary Alice Cook and sister Dorothy Sawatis.<sup>6</sup>

Even in light of the foregoing, it is still important to recognize that two (2) children/heirs did NOT sign the relinquishment document: Nelson Sawatis and Audrey Oakes. Therefore, they both remained in possession of a 1/9th interest of the Joseph Sawatis estate.

The issuing Use and Occupancy Deeds to Respondent to Mary Alice Cook and Anna Marie Sawatis Lambert in 2001, and having these two deeded parcels annexed to Dorothy Sawatis' parcel, is clearly inconsistent with the 1993 agreement. The deeds fail to recognize what the status

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<sup>6</sup> The record reflects that Sister Dorothy Sawatis occupied the original homestead on Lot #373 prior to her father's death. (LDT, Decision/Order p8)



of the Joseph Sawatis estate should have been following the 1993 agreement.

First, the relinquishment by five (5) siblings was given to only two heirs: Mary Alice Cook and Dorothy Sawatis. There was no relinquishment in 1993 to Anne Marie Sawatis Lambert. In fact, Anne Marie Sawatis Lambert was one of the children/heirs who had relinquished her share in 1993. Next, notably absent from the record is any SRMT Use and Occupancy Deed issued to Dorothy Sawatis. This is the child/heir who would, or should, have benefited from the relinquishment provided by the other five (5) siblings in 1993.<sup>7</sup> Third, in the absence of deeds issued to either Dorothy Sawatis or Anne Marie Cook following the 1993 agreement, it is difficult to ascertain what the dimensions and boundaries were with respect to their portion of the Joseph Sawatis estate. In light of the foregoing, if the 1993 relinquishment document was followed, then the 'deeding' of property to Anne Marie Sawatis Lambert in 2001 should have been done by Anne Marie Sawatis Lambert and Dorothy Sawatis, while still preserving the 1/9th interests of Nelson Sawatis and Audrey Oakes. Permitting the 2001 transaction lends itself to an inference that depriving Appellant and Audrey Oakes of their perspective shares could be viewed as a "taking" of their property without compensation, and must be ameliorated.

Based upon the foregoing, this Court finds that:

-Under the SRMT LDRO Mr. Nelson Sawatis is entitled to a 1/9<sup>th</sup> portion of the Joseph Sawatis estate. This 1/9th portion of the estate shall be limited to the area in and around the 'double wide' trailer/home which Mr. Sawatis placed upon the land of the Joseph Sawatis estate.

With the present case before us we limit our finding to permitting Mr. Nelson Sawatis to be deeded the 1/9th portion of the Joseph Sawatis estate. This is due to the fact that this appeal is limited to Mr. Nelson Sawatis making the claim against Ms. Mary Alice Cook, and the matter having come before the Court as an appeal of an LDT decision pursuant to the LDRO.

Clearly our finding can have ramifications with respect to this parcel of property. For instance, under the SRMT LDRO Ms. Audrey Oakes is also entitled to a 1/9th portion of the Joseph Sawatis estate. This right remains unallocated and undefined as it is not at issue before the Court. Next, the remaining 7/9ths portion of the estate could be contested by the remaining heirs/children of Mr. Joseph Sawatis. Here though, the effect of the 1993 relinquishment document could play a role. Again though, we do not render an opinion as to this issue as it is not before us. In light of the 1993 relinquishment document, both Ms Mary Alice Cook and Ms Dorothy Sawatis would have certain rights IF the 5 remaining siblings still consent and agree to abide by the terms of the 1993 relinquishment document. Finally, the role of the deeding of property to Ms. Anna Marie Sawatis Lambert could also be at issue, but again we render no opinion as to that issue since it is not before us. We provide the foregoing in light of our prior land dispute decisions which recognize the right of SRMT members to enter into and structure whatever land transactions they so desire. *See, White v White*, 10-LND-00009; *Point v Peters*, 10-LND-00005. Here, the persons named in this decision must

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<sup>7</sup> It appears from the record before us that Dorothy Sawatis still has not received an SRMT Use and Occupancy Deed as of the date of this decision. It is only the SRMT Council which can issue deeds under the LDRO.

be recognized with the right to do the same, with the caveat that Mr. Nelson Sawatis is entitled under the LDRO to receive his 1/9th portion of the Joseph Sawatis estate.

#### RESPONDENT'S COUNTERCLAIM


Respondent has asserted a counter-claim on appeal based upon her assertion that Appellant owes Respondent "lot Rent" of \$200 per month, for 137 months, (since October 1993 thru "present"), for a total amount due of \$27,400.00. This is because Appellant's double wide trailer and garage have occupied the lot in issue since 1993. The LDT Decision/Order addressed this claim only by stating that the Tribunal "does not have the authority to determine civil damages or compensation to either party." (LDT Decision/Order p 10)

The LDRO states in sections VII (A) that: "the Tribunal is hereby established.... and is vested with the authority to and for the sole purpose of settling land disputes which arise on the Reservation"; and states in section (B) that "The Tribunal possesses the authority to hear *all aspects* of a Land Dispute Case." (Emphasis added) Although this language might be interpreted otherwise, the LDT is of the opinion that it does not have the authority to determine damages.

The Court hereby denies the relief requested, because as we have held in this decision, Appellant Nelson Sawatis' claim to Lot #373-C is equal to that of the Respondent. In that each has a equal 'possessory interest' in the Joseph Sawatis estate in accordance with the SRMT LDRO.

This constitutes the Decision and Order of the Court in regards to this case.

Signed by my hand this 5<sup>th</sup> day of December, 2014.

  
Peter J. Herne  
Chief Judge, SRMT Court

